SARASWATHY KANDASAMI v. DATUK SARAVANAN MURUGAN & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
LAU BEE LAN JCA
AZIZAH NAWAWI JCA
LEE HENG CHEONG JCA
[CIVIL APPEAL NOS: W-02(IM)(NCVC)-2341-11-2018 &
W-02(IM)(NCVC)-2369-11-2018]
13 DECEMBER 2021

Abstract *– A defendant in a defamation suit, who has executed a consent judgment to withdraw the impugned defamatory statement and to refrain from repeating the same but went on nonetheless to thereafter repeat and publish the statement, has clearly committed an act of contempt and is susceptible to be slapped with a contempt order; likewise, his solicitor too, for advising, aiding or abetting him to repeat the contemptuous factual matters, could be equally guilty of contempt, and be liable to be censored accordingly.*

CIVIL PROCEDURE: *Committal order – Appeal against – Appeal against committal order made by High Court – Consent judgment entered between parties – Appellants proceeded to hold press conference to repeat and publish impugned statements referred in defamation suit – Whether breach of undertaking in consent judgment amounted to contempt of court – Whether contempt proceedings defective and bad in law – Whether there was misinterpretation of undertaking in consent judgment – Whether appellants committed act of contempt of court by refusing to comply with undertaking in consent judgment*

CIVIL PROCEDURE: *Judgments and orders – Consent order – Consent judgment entered between parties – Appellants proceeded to hold press conference to repeat and publish impugned statements referred in defamation suit – Whether breach of undertaking in consent judgment amounted to contempt of court – Whether contempt proceedings defective and bad in law – Whether there was misinterpretation of undertaking in consent judgment – Whether appellants committed act of contempt of court by refusing to comply with undertaking in consent judgment*

LEGAL PROFESSION: *Solicitors – Duty to client – Failure to advise clients not to breach undertaking in consent judgment – Whether solicitor failed in professional duty as officer of court – Whether solicitor committed act of contempt of court*

There were two appeals before this court. Both appeals, Appeal 2341 and Appeal 2369, were against the committal orders made by the High Court. The appellant in Appeal 2341, Saraswathy Kandasami ('Saraswathy') was an advocate and solicitor practicing under the name and style of Messrs S Kandasami & Co. In Appeal 2369, the first appellant was Sankaran Nagappen ('Sankaran') while the second and third appellants were directors

of the fourth appellant, a company and publisher of the local Tamil newspaper, Tamil Malar ('Tamil Malar'). The respondent in both appeals was a senior member of the political party, the Malaysian Indian Congress (MIC), a Member of Parliament for the Tapah constituency in the State of Perak and a former Deputy Minister of the Youth and Sports Ministry. By way of the Kuala Lumpur High Court Writ Summons No. 23 NCVC-65-08-2015 ('the defamation suit'), the respondent commenced an action against Sankaran, City Team Media Sdn Bhd ('City Team Media') and Twinstar Synergy Sdn Bhd. City Team Media is the publisher of the daily Tamil newspaper, Tamil Malar, whilst Twinstar Synergy Sdn Bhd is the printer of Tamil Malar newspaper. The respondent contended that Sankaran uttered defamatory words against him that was published by the City Team Media in the newspaper Tamil Malar. However, the defamation suit did not proceed for trial as the parties agreed to enter into a consent judgment ('consent judgment'). About nine months after the consent judgment was entered, the respondent discovered that Sankaran was going to hold a press conference to repeat and publish the impugned statements referred to in the defamation suit. The respondent immediately issued a notice to the appellants to state that any act of repeating and publishing of the impugned statements as identified in the defamation suit would be a breach of the undertaking in the consent judgment and amounted to a contempt of court. In response, Saraswathy informed the respondent that Sankaran had a right to state the factual matters to the public. Despite the exchange of correspondences, Sankaran and Saraswathy proceeded with the press conference, and the impugned statements referred to in the defamation suit were repeated by them. At all material times, Sarawasthy was representing both Sankaran and City Team Media, the fourth appellant. The statements uttered at the press conference were only published in Tamil Malar on 27 September 2017. The respondent filed an application for leave to issue contempt of proceedings pursuant to O. 52 of the Rules of Court 2012 ('ROC'), which was granted. The High Court made a finding that the appellants had breached the undertaking in the consent judgment and had therefore committed an act of contempt of court, ordering each appellant to pay a fine of RM10,000. Hence, these appeals. The appellants raised three preliminary points of law: (i) that there could not be a breach of the undertaking of the consent judgment when the said consent judgment was yet to be perfected and served on the appellants; (ii) that the respondent was misleading on the terms of the undertaking, as the contents of the undertaking in the statement filed pursuant to O. 52 r. 3(2) ROC was different from the undertaking in the consent judgment. In the consent judgment, the undertaking *inter alia* read … 'kenyataan-kenyataan berkaitan dengan kes ini,' whereas in the statement it was referred to as … 'kenyataan-kenyataan tersebut berkaitan kes ini'; (iii) that the contempt proceedings was defective and bad in law because in para. 8.6 of the statement, the respondent was

referring to … 'perkara-perkara berkaitan syarikat tersebut yang telah ditimbulkan sebelum ini' whilst the consent judgment clearly stated 'berkaitan dengan kes ini'. On the substantive appeal, (i) the appellants took the position that the respondent had misinterpreted the undertaking in the consent judgment. The undertaking was not to repeat the words complained of by the respondent in the articles referred to in the statement of claim in the defamation suit. It was only not to repeat or publish 'kenyataan-kenyataan berkaitan dengan kes' which meant not to make any statements pertaining to the case, which had been withdrawn; and (ii) whether the respondent had proved beyond reasonable doubt that the contemnors had committed an act of contempt of court by refusing to comply with the undertaking in the consent judgment.

Held (dismissing appeals with costs)
Per Azizah Nawawi JCA delivering the judgment of the court:

(1) Both Sankaran and the fourth appellant were represented by Saraswathy's legal firm, Messrs S Kandasami & Co in the defamation suit. Both Sankaran and the fourth appellant had given instructions to Saraswathy on the terms of the consent judgment. The second appellant, a director of the fourth appellant had admitted in his affidavit that he had given instructions to Saraswathy on the terms of the consent judgment. In fact, the draft consent judgment was prepared by Messrs S Kandasami & Co. Therefore, all the appellants had knowledge on the terms of the consent judgment. Added to that, the appellants had admitted to having knowledge of the notice issued by the respondent to refrain the appellants from acting in breach of the consent judgment by calling for a 'press conference and to publish or cause to the publish the said matters amounts to a contempt of the consent judgment …'. There was no merit in the appellants' contention that the contempt proceedings were misconceived as the appellants were not served with the consent judgment. The sealed consent judgment was all along in the possession of the appellants' solicitor's law firm, Messrs S Kandasami & Co. (paras 32-34)

(1a) There was also no issue regarding the fact that the consent judgment was only sealed after the date of the press statement and publication. The draft consent judgment was prepared by the appellants' solicitor's firm, Messrs S Kandasami & Co on 29 December 2016. The draft consent judgment was forwarded to the respondent's solicitor for approval. The respondent's solicitor had approved and returned the draft consent judgment to Messrs S Kandasami & Co on 30 December 2016. Messrs S Kandasami & Co only served the sealed consent judgment on the respondent's solicitor on 10 November 2017 (11 months later). As such, it was misconceived for the appellants to now complain on the late

service of the sealed order when the same was due to the delay on the part of their own solicitor in serving the sealed consent judgment on the respondent's solicitor. (para 35)

(2) Having considered the statement filed, on a proper reading of the statement, the word 'tersebut', was not misleading nor did it change the characteristics of the undertaking. The core issue in these appeals was on the interpretation of the words in the undertaking, that was '… kenyataan-kenyataan berkaitan dengan kes ini'. Further, it must be emphasised that para. 8.6 of the statement was merely a narration of events, and it referred to the fact that it was brought to the respondent's attention that Sankaran wanted to make a press statement with regards to the defamation suit. Paragraphs 8.7 referred to the notice issued by the respondent, whilst para. 8.8 was the response from Messrs S Kandasami & Co. Paragraph 8.9 narrated the event of the press statement which formed the basis of the contempt proceedings. Thus, there were no merits in the appellant's preliminary points of law. The appellants had failed to challenge the leave granted by the High Court, on the procedural issue of service and on the ambiguity of the statement. The appellants should not be allowed to indirectly attack the grant of leave by way of preliminary points of law. (paras 37-40)

(3) In order to interpret the undertaking in the consent judgment, the duty of this court is to ascertain the intention of the court which made it. The order of the court, the consent judgment herein, was to be ascertained primarily from the language of the order itself. The undertaking in the consent judgment was not ambiguous as submitted by the appellants. The undertaking, in plain and ordinary meaning, simply meant that Sankaran and City Team Media undertook not to repeat or publish the statements in relation to this case, namely the defamation suit. The undertaking bound both Sankaran and the fourth appellant not to repeat or publish the impugn statements in relation to the defamation suit. The purpose of the consent judgment was to settle the defamation suit. The defamation suit was premised on the statements made by Sankaran in the newspaper Tamil Malar, which the respondent complained to have defamed him. The relief sought in the defamation suit included a prayer to injunct the appellants from repeating and publishing the impugned statements. Therefore, it was simply incredible if the consent judgment allowed Sankaran and City Team Media to continue repeating and publishing the same impugn statements with impunity. (paras 44, 46, 49, 53 & 54)

(4) The impugned statements in the defamation suit was with regards to Sankaran's statement that he was made a director of a company named RMW, which took a loan from Maybank. As a director of that company, he was asked to sign the loan agreement and guarantee letter involving millions of ringgit. Sankaran alleged that the respondent had

caused him to become a bankrupt. Both Saraswathy and Sankaran attended the press conference on 26 September 2017. The statements issued during the press conference was published by the fourth appellant in the Tamil Malar newspaper the next day, on 27 September 2017. Having considered the press report in the Tamil Malar, the impugned statements in the defamation suit were repeated and published in the Tamil Malar, and this included the loan taken by the company RMW from Maybank, the acts of the respondent causing Sankaran to guarantee the loans, which led to the bankruptcy proceedings against him. As such, there was a breach of the undertaking in the consent judgment not to repeat the impugned statements in the defamation suit. (paras 60-62)

(5) When Sankaran issued the impugned statements during the press conference on 26 September 2017, Sankaran was in breach of the undertaking and was therefore guilty of contempt of court. When the fourth appellant published the impugned statement in the Tamil Malar newspaper on 27 September 2017, the fourth appellant was in breach of the undertaking and was therefore guilty of contempt of court. Since the fourth appellant was guilty of contempt of court, the directors of the fourth appellant, that was the second and the third appellants were also guilty of contempt as they were the directing minds and will of the fourth appellant in permitting the breach of the undertaking by the fourth appellant. (para 62)

(6) Saraswathy had aided and abetted the contemnors in breaching the undertaking given in the consent judgment. Instead of advising her clients not to breach the undertaking, Saraswathy responded to the notice by stating that her client, Sankaran, had a right to state the factual matters to the public and denied the terms of the undertaking in the consent judgment. Saraswathy had attended and participated in the press conference where the impugned statements in the defamation suit were repeated and subsequently published by the fourth appellant in the Tamil Malar newspaper the next day. As an advocate and solicitor, Saraswathy's primary duty as an officer of the court was to ensure the rules of court were observed, and to respect the order issued by the court. Therefore, Saraswathy had failed in her professional duty as an officer of the court when she proceeded with the press conference on 26 September 2017 with Sankaran. Any reasonable professional advocate and solicitor, having been issued with a notice of possible contempt, would not have taken a cavalier attitude over the seriousness of a possible contempt action. If Saraswathy took the position that the press conference would not be a breach of the undertaking, she should have advised her client to postpone the press conference pending clarifications from the judge on the terms of the consent judgment. Saraswathy had committed an act of contempt of court when she had

aided and abetted Sankaran and the fourth appellant in breaching the undertaking given in the consent judgment. There were thus no merits in these appeals that warranted an appellate intervention. (paras 63, 65, 66, 67 & 72)

Case(s) referred to:

CIMB Bank Bhd v. Sebang Gemilang Sdn Bhd & Anor [2018] 5 CLJ 129 FC ***(refd)***
Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***
In re Bramblevale Ltd [1970] Ch 128 ***(refd)***
MBf Holdings Bhd & Anor v. Houng Hai Kong & Ors [1994] 4 CLJ 1002 HC ***(refd)***
Newacres Sdn Bhd v. Sri Alam Sdn Bhd [2000] 2 CLJ 833 FC ***(refd)***
Puah Bee Hong & Anor v. Pentadbir Tanah Daerah Wilayah Persekutuan Kuala Lumpur & Anor (Robert Teo Keng Tuan, Intervener) & Another Case [1994] 2 CLJ 705 SC ***(refd)***
Seth Manakchand v. Chaube Manoharlal & Anor AIR (31) [1944] PC 46 ***(refd)***
T O Thomas v. Asia Fishing Industry Pte Ltd [1977] 1 LNS 126 FC ***(refd)***
Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849 FC ***(refd)***
Tiew Kun v. Tneu Seng Bee & Another Appeal [2010] 2 CLJ 68 CA ***(refd)***
Topanmal v. Messrs Kundomal Gangaram [1960] AIR 388 SC ***(refd)***
Vellathussseri v. Vellathuseri (1931) 2 MLJ 596 ***(refd)***
Visiber Sdn Bhd v. Tan Meng Them & Ors [2009] 1 LNS 963 HC ***(refd)***
Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal [1993] 3 CLJ 210 SC ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 45 rr. 5, 7(2), (6), O. 52 rr. 3(2), 4(4)

(Civil Appeal No: W-02(IM)(NCVC)-2341-11-2018)
For the appellant - Saraswathy Kandasami; M/s S Kandasami & Co
For the respondent - Premshangar Venugopal & Muralidharan Balan Pillai; M/s Lewis & Co

(Civil Appeal No: W-02(IM)(NCVC)-2369-11-2018)
For the appellant - M Manoharan & P Thavamalar; M/s Sathiya Devi & Co
For the respondent - Premshangar Venugopal & Muralidharan Balan Pillai; M/s Lewis & Co

[Editor's note: Appeal from High Court, Kuala Lumpur; Civil Suit No: 23NCVC-65-08-2015 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Azizah Nawawi JCA:

Introduction

[1] There are two appeals before this court:

(i) Appeal No. W-02(IM)(NCVC)-2341-11-2018; and

(ii) Appeal No. W-02(IM)(NCVC)-2369-11-2018.

[2] Both appeals, Appeal No. W-02(IM)(NCVC)-2341-11-2018 ("Appeal 2341") and Appeal No. W-02(IM)(NCVC)-2369-11-2018 ("Appeal 2369") are against the committal order made by the learned High Court Judge on 14 November 2018. All appellants in both appeals have been found to be in contempt of court and were fined RM10,000 each.

[3] Having considered the appeal records and the submissions of all parties, this court had dismissed both appeals with costs.

The Salient Facts

[4] The appellant in Appeal No. 2341, Saraswathy Kandasami ("Saraswathy") is an advocate and solicitor of the High Court of Malaya, practising under the name and style of Messrs S Kandasami & Co at No. 20A-1, First Floor, Jalan Ipoh Kecil off Jalan Ipoh, 50350 Kuala Lumpur.

[5] The first appellant ("Sankaran") in Appeal No. 2369 is an individual having an address at 38, Jalan Cecawi 6/21, Kota Damansara, 47810 Petaling Jaya, Selangor Darul Ehsan.

[6] The second and the third appellants are the directors of the fourth appellant, a company registered in Malaysia and the publisher of the local Tamil newspaper called "Tamil Malar" ("the Tamil Malar").

[7] The respondent in both appeals is a senior member of the political party, the Malaysian Indian Congress (MIC), was a Member of Parliament for the Tapah constituency in the State of Perak and a former Deputy Minister of the Youth and Sports Ministry.

[8] By way of the Kuala Lumpur High Court Writ Summons No. 23 NCVC-65-08-2015 dated 26 August 2015 ("the defamation suit"), the respondent commenced an action against Sankaran a/l Nagappen, City Team Media Sdn Bhd ("City Team Media") and Twinstar Synergy Sdn Bhd City Team Media is the publisher of the daily Tamil newspaper, Tamil Malar, whilst Twinstar Synergy Sdn Bhd is the printer of Tamil Malar newspaper.

[9] The respondent contended that Sankaran a/l Nagappen uttered defamatory words against him that was published by the City Team Media in the newspaper Tamil Malar. The statement of claim, *inter alia*, reads as follows (the "impugn statements"):

Penerbitan Pada 21.6.2015

5. Pada akhir bulan Julai 2015, Defendan Pertama telah secara niat jahat, salah, cuai dan atau melulu tanpa mengendahkan kebenaran dan ketepatan telah mengeluarkan dan menerbitkan kata-kata tidak benar langsung, tidak tepat dan palsu berkenaan Plaintif dan mengenai beliau dalam pejabat dan pekerjaannya sebagai Timbalan Menteri Kementerian Belia dan Sukan di mana Defendan-Defendan lain telah menyebabkan penerbitan dan percetakan kata-kata ini di surat khabar tersebut pada 22 Julai 2015 dan 23 Julai 2015 dengan mengandungi perkataan-perkataan berikut:

A …

6. Maksud sebenar perkataan-perkataan tersebut di penerbitan-penerbitan tersebut yang diterjemahkan dalam Bahasa Inggeris seperti berikut:

6.1 PENERBITAN PADA 22.7.2015

B

He Made Me A Bankrupt ...!

He Became Deputy Minister …?

Sanggaran Nagappan grumbles

C Kuala Lumpur, July 22 – Dato Saravanan made him a co-debtor for a loan, failed to make prompt payments, tell lies and finally made him an insolvent, says MIC headquarters a formal staff Sanggaran Nagappan, who served there for a long period. In a police report against Dato M Saravanan, he said that the Deputy Minister in the Youth and Sports Ministry who receives grants for the betterment of youths and give talks about the well-being of community. Dato Saravanan, made him co-debtor, which later the latter defaulted and caused him to be tried in court which made him to end up pauper.

D

He made Me A Bankrupt

E 20th March 2002, Dato Saravanan appointed me as a Director of the company named RMW. I was a director of that company until 2nd November 2004. During that period, through our RMW Berhad a loan of RM7 million was obtained from Maybank Berhad. As a director I've been asked to sign the loan agreement and guarantee letter. As when I was the Director during that time Saravanan was also the director.

F Since he was also the director of the company Saravanan has signed the guarantee letter too. According to Joint Guarantee letter, he as co-guarantor he lied to me that he was paying the loan promptly.

G Maybank Berhad filed legal proceedings against me since the loan has not been paid promptly. I have been sued for that RM7 million loan which together with the interest became RM8.1 million. Subsequently a judgement was obtained against me.

Many times I have been complaining this matter to Saravanan, he just kept promising to rectify it but he did not make any effort to rectify it. After making me an insolvent, Saravanan pretends like

H nothing happened.

Since both the directors signed the Joint Guarantee Letter, how was it possible to make myself to be the insolvent and he is not taking any responsibility and remains being a Deputy Minister? There is a conspiracy behind it. Sanggaran Nagappan told Tamil Malar.

I "I want the answer … I need justice …" says Sanggaran.

PENERBITAN PADA 23.7.2015

I need Justice!

Kuala Lumpur, July 23 – "Dato Saravanan make use of me until he obtained millions worth of loan for RMW by making me an Associate Director and a Joint Guarantor for the loan. Later without my knowledge he terminated me from the Director's post and appointed his wife as a Director of the company. Is this social service? asks former MIC staff Nagappen.

I Need Justice

Sankaran Nagappen grumbles

On 20th March 2002, Dato Saravanan appointed me as a director of the Company named RMW. I was a director of that Company until 2nd November 2004.

During that period through RMW Berhad, a loan amounting to few millions were obtained from Maybank Berhad. As a director I have been asked to sign the loan agreement and guarantee letter.

It is noted that when I was the Director, Saravanan too was also the Director of the Company.

After having obtained the loan with both of our signatures as guarantors, I was terminated from the post of Director without my knowledge and after obtaining the said loan, within four months he appointed his wife as the Director.

After doing so, he should have released me from being a Guarantor for the loan and he should have taken steps to make his wife as a Guarantor. But he did not do so, by making me a debtor, his true colours have been proven. His sincerity to the community been exposed.

After being sued in court, then I obtain the legal documents from the Company Secretary and thus found the details.

Having used my name, Dato Saravanan obtained a few millions and made me a bankrupt.

I am struggling now because my house is about to be auctioned off by the bank. But, Dato Saravanan pretending like nothing happened and roaming around in virtue of a 'Deputy Minister and Community Leader'. Anyhow so far he did not take any steps to solve this matter.

Saravanan, who always claiming to help the community and youths to raise their standard of living, is answerable to me first as a shareholder of his company that made me insolvent due to the debt that I owe together with him.

A While I had been made an insolvent for the loan that we took together, what happened to the bankruptcy application again Saravanan who is also the joint borrower? I would like to know what the judgment was.

So I did not get any reply from Saravanan's side, I will proceed to seek for justice Sankaran Nagappen said.

B

Plaintif akan merujuk kepada Penerbitan-Penerbitan tersebut dengan terjemahannya pada ketika perbicaraan kes ini untuk kesan dan maksud sebenarnya.

7. Plaintif menegaskan dan ingin menegaskan bahawa Defendan-Defendan
C telah menerbitkan dan/atau menyebabkan terbitan Penerbitan-Penerbitan tersebut berkenaan perkara-perkara fitnah, palsu dan/atau tidak benar mengenai Plaintif dan/atau mengenai beliau dan dalam pejabat serta jawatannya sebagai seorang Timbalan Menteri Kementerian Belia dan Sukan dengan niat jahat serta kolateral untuk memberi gambaran tidak benar, palsu dan negatif berkenaan Plaintif, di mana antara perkataan-
D perkataan tersebut adalah termasuk tetapi tidak terhad kepada:

7.1 Penerbitan Pada 22.7.2015

…

7.2 Penerbitan Pada 22.7.2015

E …

8. …

Ertikata Atau Makna Semulajadi Dan Sebenar

9. Perkataan-perkataan yang terkandung dalam Penerbitan-Penerbitan
F tersebut dalam ertikata atau makna semulajadi dan sebenar dan biasa bermaksud bahawa:

9.1 Plaintif telah melakukan perbuatan-perbuatan yang salah dan adalah seorang yang tidak jujur, kekurangan integriti, penipu dan tidak bertanggungjawab;

G 9.2 Plaintif telah gagal melaksanakan tugas-tugas nya kepada orang umum terutamanya masyarakat India;

9.3 Plaintif tidak layak untuk mewakili kaum India dalam apa cara atau rupa;

H 9.4 Plaintif merebut apa sahaja beliau boleh dapati untuk keuntungan sendiri;

9.5 Plaintif tidak layak memegang jawatan sebagai Timbalan Menteri Kementerian Belia dan Sukan; dan

9.6 Plaintif tidak boleh dipercayai sama sekali dan harus dijauhi.

I

[10] However, the defamation suit did not proceed for trial, as the parties (the respondent/plaintiff and appellants Sankaran a/l Nagappen, City Team and Twinstar Synergy) have agreed to enter into a consent judgment on 29 December 2016 ("consent judgment") on the following terms:

Penghakiman Persetujuan

TINDAKAN INI setelah didengar di hadapan YA Dato' Mohd Zaki Bin Abdul Wahab Peguamcara bagi pihak Plaintif dan Venushah a/p Nadarajan, Peguamcara bagi pihak Defendan Pertama dan Ke-2, MAKA ADALAH DIHAKIMI SECARA PERSETUJUAN bahawa:

a) Plaintif menarik balik tindakan ini dengan kebebasan untuk menfailkan semula;

b) Plaintif membayar kos sebanyak RM5,000 kepada Defendan Ke-2;

c) Defendan Pertama dan Ke-2 aku janji untuk tidak mengulangi atau menerbitkan kenyataan-kenyataan berkaitan dengan kes ini;

d) Kos tertakluk kepada alokatur.

Bertarikh 29 Disember 2016
Norfauzani Binti Mohd Nordin
Timbalan Pendaftar,
Mahkamah Tinggi, Kuala Lumpur.

PENGHAKIMAN PERSETUJUAN ini difailkan oleh Tetuan S. Kandasamy & Co, Peguamcara Defendan Pertama dan Ke-2 yang mempunyai alamat untuk penyampaian di lot No. 20A, Tingkat 1, Jalan Ipoh Kecil, Off Jalan Ipoh, 50350 Kuala Lumpur.

[11] About nine months after the consent judgment, the respondent discovered that Sankaran was going to hold a press conference on 26 September 2017 to repeat and publish the impugn statements referred to in the defamation suit. The respondent's solicitors immediately issued a notice to the appellants' solicitors on 26 September 2017 to state that any act of repeating and publishing of the impugn statements as identified in the defamation suit will be a breach of the undertaking in the consent judgment and amounts to contempt of court. The notice, *inter alia* reads as follows:

Re: KUALA LUMPUR HIGH COURT SUIT NO: 23NCVC-65-08/2015
Datuk Saravanan Murugan - vs - Sankaran a/l Nagappen & 2 Ors
– Consent Judgment dated 29.12.2016.

The above matter and the Consent Judgement recorded in Court on 29.12.2016 by parties has reference (a copy of the approved draft enclosed for your attention).

Our client has informed us that your clients, Sankaran a/l Nagappen, intends to publish or cause the publish by way of a press conference matters in relation to the RMW Manufacturing Sdn Bhd loan with

A Maybank where your client was a Guarantor to the said Loan ("the said Matters"). These matters had been raised in detail in the above said action and by consent, it was the adjudged that your clients, both Sankaran and City Team Media Sdn Bhd (the publisher of Tamil Malar news daily), undertook not to publish or cause to publish words relating to the said Matters.

B

Kindly take note that the attempt by your client to call for a press conference and to publish or cause to the publish the said Matters amounts to a contempt of the Consent Judgement dated 29.12.2016 and we trust you will advise your clients to refrain from acting in breach of the Consent Judgement dated 29.12.2016.

C

Our client reserve his rights.

[12] In response, Saraswathy informed the respondent that Sankaran has a right to state the factual matters to the public. The appellants' response, *inter alia*, reads as follows:

D **Re: Kuala Lumpur High Court Suit No: 23NCVC-65-08-2015**

Datuk Saravanan Murugan ... Plaintiff
Vs
Sankaran a/l Nagappen & 2 Others ... Defendant

We refer to the above matter and your letter dated 26.9.2016.

E

Please be informed that your Order is clear in it's term that our 'client had agreed not to repeat or make statements relating to the case' and clearly not the factual averments contained in the said suit. This was clearly not the matter consented for which you should be aware of.

F

Our clients have the right to make any statements pertaining to the factual averment for which they had pleaded justification as Defence. Please also take note it was a client who wanted to withdraw the case under the pretext of pending investigation.

[13] Despite the exchange of correspondences, Sankaran and Saraswathy proceeded with the press conference, and the impugn statements referred to in the defamation suit were repeated by them. At all material times, Saraswathy was representing both Sankaran and City Team Media, the fourth appellant.

G

[14] The statements uttered at the press conference was only published in the fourth appellant's newspaper, Tamil Malar on 27 September 2017.

H

[15] The respondent filed an application for leave to issue contempt proceedings on 19 February 2018 pursuant to O. 52 of the Rules of Court 2012 ("ROC 2012"). Leave was granted on 13 March 2018. The appellants did not file any application to set aside the leave granted by the court on 19 February 2018.

I

[16] With the agreements of parties, the contempt application was heard by way of affidavit evidence. A

[17] After hearing the submissions of parties, the learned judge made the contempt order against the contemnors and Saraswathy.

[18] Hence, the appeal before this court. B

The Findings Of The High Court

[19] The learned judge made a finding that the appellants have breached the undertaking in the consent judgment and have therefore committed an act of contempt of court. The learned judge then ordered each appellant to pay a fine of RM10,000. The learned judge findings, *inter alia*, are as follows: C

> ... Saya dapati penghakiman persetujuan yang dimasuki menghalang Defendan Pertama dan Kedua (Responden Pertama dan Kelima) dari mengulangi dan menerbitkan semula pengataan yang menjadi asas fitnah iaitu Pemohon telah menyebabkan Responden Pertama dijadikan seorang bankrap kerana menjadi penjamin kepada pinjaman syarikat RMW. D
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> Saya dapati sidang akhbar yang dibuat oleh Responden Pertama pada 26.9.2017 yang turut dihadiri oleh Responden Ketua telah mengulangi isu Pemohon menyebabkan Responden Pertama dijadikan seorang bankrap, perkara yang menjadi teras tuntutan fitnah terdahulu. Oleh itu Responden Pertama telah mengingkari terma penghakiman persetujuan yang dimasuki dan Responden Kedua telah membantu Responden Pertama mengingkari terma penghakiman persetujuan tersebut. E
>
> Kandungan sidang akhbar ini telah diterbitkan oleh Responden Kelima pada 27.9.2017. Adalah jelas Responden Kelima telah mengingkari terma penghakiman persetujuan tersebut. Responden Ketiga dan Keempat yang menjadi pengarah Responden Kelima dengan jelasnya mempunyai kawalan ke atas Responden Kelima. F
>
> Berasaskan kedudukan tersebut saya dapati kelima-lima Responden telah melakukan perbuatan menghina Mahkamah kerana mengingkari terma persetujuan yang telah dipersetujui ... G

Our Decision

[20] The central feature of appellate intervention is trite, that is to determine whether or not the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence. This had been explained by the Federal Court in the case of *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309; [2005] 2 MLJ 1, where the Federal Court held as follows: H

> [14] In our view, the *Court of Appeal in citing these cases had clearly borne in mind the central feature of appellate intervention, ie to determine whether or not the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence.* In so doing, the Court of Appeal was I

A perfectly entitled to examine the process of evaluation of the evidence by the trial court. Clearly, the phrase 'insufficient judicial appreciation of evidence' merely related to such a process. This is reflected in the Court of Appeal's restatement that a judge who was required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole B or any part of the evidence placed before him. The Court of Appeal further reiterated the principle central to appellate intervention, ie that a decision arrived at by a trial court without judicial appreciation of the evidence might be set aside on appeal. This is consistent with the established plainly wrong test. (emphasis added)

C **[21]** In another case, the Federal Court in *CIMB Bank Bhd v. Sebang Gemilang Sdn Bhd & Anor* [2018] 5 CLJ 129; [2018] 3 MLJ 689 held as follows:

[38] The issue of knowledge of the equitable assignment is entirely a question of facts. Both the courts below concluded that the appellant had D knowledge of the equitable assignment based on the facts and circumstances of the case. *It is trite law that an appellate court will not, generally speaking, intervene unless the trial court is shown to be plainly wrong in arriving at its judicial decision or there has been no or insufficient judicial appreciation of evidence* (see *Gan Yook Chin (P) & Anor v. Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1). (emphasis added)

E **[22]** Bearing in mind the above cases, we will now deal with the issues raised by the parties.

Preliminary Points Of Law

[23] The appellants have raised three preliminary points of law. The first F preliminary point of law is on the issue of service. It is the submission of the appellants that the contempt proceedings were misconceived and bad in law for the following reasons:

(i) the consent judgment had not been perfected on the date of the press G statement and the said publication;

(ii) hence, as at the date of the said press statement and the said publication, the consent judgment had not been served on the first and the fourth appellants, who were the parties to the main suit;

(iii) the consent judgment had not been served on the second and third H appellants as the directors of the fourth appellant with the requisite penal notice;

(iv) the consent judgment was only perfected on 3 November 2017, about 38 days after the said press statement and the said publication; and

I (v) the sealed consent order was served on the first to fourth appellants on 30 November 2017, which is more than two months after the date of the said press statement and the said publication.

[24] Therefore, the appellants took the position that there cannot be a breach of the undertaking of the consent judgment when the said consent judgment was yet to be perfected and served on the appellants.

[25] On the issue of service of the consent judgment, it is common ground that O. 45 r. 5 of the Rules of Court 2012 ("ROC 2012") provides that where a person disobeys a judgment or order requiring him to abstain from doing an act, the enforcement of such judgment or order can be made *via* an order for committal with the leave of court.

[26] Order 45 r. 7(2) of ROC 2012 provides that such judgment or order shall not be enforced unless the same had been served personally on the person required to do or abstain from doing the act in question.

[27] The above rule is however subject to the following exception as found at O. 45 r. 7(6) of ROC 2012, which provides the defendants to have notice of the terms of the court order. Order 45 r. 7(6) of ROC 2012 reads:

> (6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, **the person against whom or against whose property it is sought to enforce the order has had notice thereof** either:
>
> (a) by being present when the order was made; or
>
> (b) by being notified of the terms of the order, whether by telephone, telegram or otherwise. (emphasis added)

[28] The application of O. 45 r. 7(6) of ROC 2012 was considered by Justice Azahar Mohamed (now CJM) in the case of *Visiber Sdn Bhd v. Tan Meng Them & Ors* [2009] 1 LNS 963 where His Lordship held:

> It is equally important to note that the order in this matter is prohibitory in nature in that it restrained the Defendants from carrying out the infringing acts. In my view, pursuant to Order 45 rule 7(6) of the RHC, the order may be enforced by way of committal notwithstanding that it has not been served personally on all the Defendants. Nevertheless, there is this very important qualification to be made. **The order can only be enforced if all the Defendants have had notice thereof by being notified of each of the terms of the order.** This must be emphasized.
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> (emphasis added)

[29] The same position was taken by the Supreme Court in *Puah Bee Hong & Anor v. Pentadbir Tanah Daerah Wilayah Persekutuan Kuala Lumpur & Anor (Robert Teo Keng Tuan, Intervener) & Another Case* [1994] 2 CLJ 705, where the court held that service of the relevant court order was not essential and all that was required was for the proposed contemnor to have notice of the order that was said to have been breached.

[30] Added to that, the Federal Court in *T O Thomas v. Asia Fishing Industry Pte Ltd* [1977] 1 LNS 126 held that if the contemnor has knowledge of the terms of the court order though it had not been served, the court has the discretion to dispense with the requirement of personal service. This discretion is provided for under O. 52 r. 4(4) of the ROC 2012.

[31] Therefore, the issue here is whether the appellants have knowledge of the terms of the consent judgment.

[32] It is common ground that both Sankaran and the fourth appellant (City Team Media) were represented by Saraswathy's legal firm, Messrs S Kandasami & Co in the defamation suit. It is also not in dispute that both Sankaran and the fourth appellant had given instructions to Saraswathy on the terms of the consent judgment. The second appellant, Periasami a/l Munisamy, a director of the fourth appellant had admitted in his affidavit that he had given instructions to Saraswathy on the terms of the consent judgment. There is no affidavit filed by the third appellant, Mathialagan a/k Maisllamany, another director of the fourth appellant. In fact, the draft consent judgment was prepared by Messrs S Kandasami & Co. Therefore, we are of the considered view that all the appellants have knowledge of the terms of the consent judgment.

[33] Added to that, the appellants have admitted to having knowledge of the notice issued on 26 September 2017 by the respondent's solicitors to refrain the appellants from acting in breach of the consent judgment by calling for a "press conference and to publish or cause to the publish the said matters amounts to a contempt of the consent judgement ...".

[34] Therefore, on the factual matrix of these appeals, we find no merit in the appellants' contention that the contempt proceedings were misconceived as the appellants were not served with the consent judgment. The sealed consent judgment was all along in the possession of the appellants' solicitor firm, Messrs S Kandasami & Co.

[35] There is also no issue with regard to the fact that the consent judgment was only sealed after the date of the press statement and publication. This is because the draft consent judgment was prepared by the appellants' solicitor's firm, Messrs S Kandasami & Co on 29 December 2016. The draft consent judgment was forwarded to the respondent's solicitor for approval. The respondent's solicitor had approved and returned the draft consent judgment to Messrs S Kandasami & Co on 30 December 2016. Messrs S Kandasami & Co only served the sealed consent judgment on the respondent's solicitor on 10 November 2017 (11 months later). As such, it is misconceived for the appellants to now complaint on the late service of the sealed order when the same was due to the delay on the part of their own solicitors in serving the sealed consent judgment on the respondent's solicitors.

[36] The second preliminary point of law raised by the appellants is that the respondent was misleading on the term of the undertaking, as the contents of the undertaking in the statement filed pursuant to O. 52 r. 3(2) ROC 2012 is different from the undertaking in the consent judgment. In the consent judgment, the undertaking, *inter alia*, reads "… kenyataan-kenyataan berkaitan dengan kes ini", whereas in the statement, it was referred to as "… kenyataan-kenyataan tersebut berkaitan kes ini".

[37] Having considered the statement filed, we find that the only difference is the word 'tersebut', and on a proper reading of the statement, we find the word 'tersebut' is not misleading nor does it change the characteristics of the undertaking. The core issue in these appeals is on the interpretation of the words in the undertaking, that is, "… kenyataan-kenyataan berkaitan dengan kes ini".

[38] The third preliminary point of law raised by the appellants is that the contempt proceedings is defective and bad in law because in para. 8.6 of the statement, the respondent was referring to "... perkara-perkara berkaitan syarikat tersebut yang telah ditimbulkan sebelum ini", whilst the consent judgment clearly states "berkaitan dengan kes ini". It must be emphasised here that para. 8.6 is merely a narration of events, and it refers to the fact that it was brought to the respondent's attention that Sankaran wanted to make a press statement on 26 September 2017 with regards to the defamation suit. Paragraph 8.7 refers to the notice issued by the respondent's solicitor, whilst para. 8.8 is the response from Messrs S Kandasami & Co. Paragraph 8.9 narrates the event of the press statement on 27 September 2017, which forms the basis of the contempt proceedings.

[39] Based on the reasons enumerated above, we are of the considered opinion that there are no merits in the appellants' preliminary points of law.

[40] Added to that, we find that the appellants have failed to challenge the leave granted by the High Court, on the procedural issue of service and on the ambiguity of the statement. The appellants had the opportunity to make an application to set aside the leave, but they have failed to do so. Since the leave was not challenged directly by an application to set it aside, the appellants should not be allowed to indirectly attack the grant of leave by way of preliminary points of law.

The Undertaking

[41] On the substantive appeal, the appellants took the position that the respondent had misinterpreted the undertaking in the consent judgment. It is the submission of the appellants that the undertaking was not to repeat the words complained of by the respondent in the articles referred to in the statement of claim in the defamation suit. The undertaking was only not to repeat or publish "kenyataan-kenyataan berkaitan dengan kes", which means

A not to make any statements pertaining to the case, which had been withdrawn. The appellants relied on the correspondences leading to the entering of the consent judgment to support their contention that the undertaking was only not to make any statements pertaining to the case.

[42] The undertaking in the consent judgment reads as follows:

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> c) Defendan Pertama dan Ke-2 aku janji untuk tidak mengulangi atau menerbitkan kenyataan-kenyataan berkaitan dengan kes ini;

[43] In view of the opposing stand taken by the parties, the duty is on us to read and interpret the said order/consent judgment itself. In *Newacres Sdn Bhd v. Sri Alam Sdn Bhd* [2000] 2 CLJ 833 (FC), it was held by the Federal C Court, per Chong Siew Fai CJ (Sabah & Sarawak) citing Sir George Rankin in *Seth Manakchand v. Chaube Manoharlal & Anor* AIR (31) [1944] PC 46, that "For the purpose of interpreting a decree no other document is so directly in point as the judgment or case in the nature of things have comparable force".

D

[44] In order to interpret the undertaking in the consent judgment, the duty of this court is to ascertain the intention of the court which made it. In *Vellathussseri v. Vellathuseri* (1931) 2 MLJ 596, the High Court decided at p. 605 that the duty is upon the assessing court to interpret an order:

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> The Court which makes the decree should always make its meaning clear but sometimes does not do so. *The executing Court has then the duty of interpreting the decree … There again the executing Court has to interpret the decree and so ascertain the intention of the Court which made it.* (emphasis added)

[45] In *Tiew Kun v. Tneu Seng Bee & Another Appeal* [2010] 2 CLJ 68, the F Court of Appeal held as follows:

> In accordance with the general rules of interpretation, the language used in a judgment or order must be construed according to its ordinary meaning and not in some unnatural or obscure sense.

G **[46]** Therefore, the order of the court, the consent judgment herein, is to be ascertained primarily from the language of the order itself. We are of the considered opinion that the undertaking in the consent judgment is not ambiguous as submitted by the appellants. We find that the undertaking, in plain and ordinary meaning, simply means that first defendant (Sankaran) and the second defendant (City Team Media) undertake not to repeat or H publish the statements in relation to this case, namely the defamation suit. The use of the word "mengulangi" clearly shows there should not be any repetition of the impugn statements in the defamation suit.

[47] We do not agree with the appellants' contention that the undertaking I was not to repeat or publish about the case or about the terms of the consent judgment. This is because there is nothing to show that the parties had wanted the terms of the consent judgment to be kept private and confidential. The consent judgment is not protected by any non-disclosure agreement.

[48] However, the appellants sought to rely on their solicitor's letter dated 7 December 2016, issued on a strictly without prejudice basis, which reads, *inter alia*:

> 4. The 2nd Defendant undertakes not to publish this settlement agreement in its newspaper.

[49] We are of the considered opinion and we agree with the respondent that the above para. (4) in the said letter was not incorporated in the consent judgment. Instead, the undertaking binds both the first defendant/Sankaran and the second defendant/fourth appellant not to repeat or publish the impugn statements in relation to the defamation suit.

[50] In any event, the Federal Court in *Newacres Sdn Bhd* (*supra*) held that it is permissible to look at the pleadings, that is, the statement of claim to resolve any uncertainties in a judgment. The Federal Court had cited with approval the Indian case of *Topanmal v. Messrs Kundomal Gangaram* AIR 1960 SC 388 where the Indian Supreme Court made the following observation:

> At worst, the decree can be said to be ambiguous. In such a case it is the duty of the executing Court to construe the decree. **For the purpose of interpreting a decree, when its terms are ambiguous, the Court would certainly be entitled to look into the pleadings and the judgment.**
>
> (emphasis added)

[51] Therefore, based on the case of *Newacres Sdn Bhd* (*supra*), the appellants cannot rely on their solicitor's letter dated 7 December 2016, issued on a strictly without prejudice basis, for the purpose of interpreting the consent judgment.

[52] In any event, the handwritten minutes of the learned judge dated 29 December 2016 also shows the same wordings, that "… defendan-defendan membuat aku janji tidak akan mengulangi atau menerbitkan kenyataan berkaitan kes ini". There is nothing in the learned judge's minutes to show that the undertaking was only limited to the publication of the terms of the consent judgment.

[53] Added to that, there is no ambiguity in the terms of the consent judgment as the draft order was prepared by the appellants' solicitors. The draft order was then forwarded to the respondent's solicitors for their approval. The approved order is reflected in the consent judgment. Despite preparing the draft order as reflected in the consent judgment, the appellants are now saying that there is ambiguity in the undertaking, and that what the parties meant was to limit the undertaking to the publication of the case or the consent judgment.

[54] Further, we cannot agree with the appellants' construction as the purpose of the consent judgment was to settle the defamation suit. The defamation suit is premised on the statements made by Sankaran in the newspaper Tamil Malar, which the respondent complained to have defamed him. The relief sought in the defamation suit included a prayer to injunct the defendants from repeating and publishing the impugn statements. Therefore, it is simply incredible if the consent judgment allows Sankaran and City Team Media to continue repeating and publishing the same impugn statements with impunity.

[55] Added to that, the word "mengulangi" or repeat, simply means an act done in the past and this can only refer to the impugn statements in the defamation suit.

Breach Of The Undertaking

[56] It is common ground that a civil contempt of court includes an act to disobey a judgment or order requiring a person to abstain from doing a specified act. In *Wee Choo Keong v. MBf Holdings Bhd & Anor And Another Appeal* [1993] 3 CLJ 210 His Lordship Abdul Hamid Omar LP had this to say on what amounts to an act of contempt:

> It is established law that a person against whom an order of court has been issued is duty bound to obey that order until it is set aside. It is not open for him to decide for himself whether the order was wrongly issued and therefore does not require obedience. His duty is one of obedience until such time as the order may be set aside or varied. Any person who fails to obey an order of Court runs the risk of being held in contempt with all its attendant consequences.

[57] In *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849 (FC) held as follows:

> [26] **Contempt has been reclassified either as (1) a specific conduct of contempt for breach of a particular court order;** or (2) a more general conduct for interfering with the due administration or the course of justice. This classification is better explained in the words of Sir Donaldson MR in *Attorney-General v. Newspaper Publishing Plc,* (*supra*) at p. 362:
>
> > Of greater assistance is the reclassification as (a) **conduct which involves a breach, or assisting in the breach, of a court order;** and (b) any other conduct which involves an interference with the due administration of justice, either in a particular case or, more generally, as a continuing process, the first category being a special form of the latter, such inference being a characteristic common to all contempt per Lord Diplock in *Attorney-General v. Leveller Magazine Ltd* [1979] AC 440 at 449.

[27] This reclassification was adopted by the Court of Appeal in *Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd* [2001] 4 CLJ 549. A

[28] **Hence, the law of contempt is wide enough to cover not only those who are bound by the court order, but other parties who assist the disobedience to the court order.** It was reported in *Attorney-General v. Times Newspapers Ltd* [1991] 2 All ER 398 that a person, who knowingly impeded or interfered with the administration of justice in an action between two other parties, was guilty of contempt of court notwithstanding that he was neither named in any order of the court nor had assisted a person against whom an order was made. (emphasis added) B

[58] The burden of proof in contempt of court proceedings is proof beyond reasonable doubt. *In re Bramblevale Ltd* [1970] Ch 128 His Lordship Lord Denning, *inter alia* stated as follows: C

A contempt of Court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. D

[59] The next issue is whether the respondent had proven beyond reasonable doubt that the contemnors had committed an act of contempt of court by refusing to comply with the undertaking in the consent judgment. The appellants would have committed an act of contempt of court by breaching the undertaking, which is not to repeat or publish the impugn statements in the defamation suit. E

[60] It is not in dispute that the impugn statements in the defamation suit is with regards to Sankaran's statement that he was made a director of a company named RMW, which took a loan from Maybank. As the director of that company, he was asked to sign the loan agreement and guarantee letter involving millions of ringgit. Sankaran alleged that the respondent had cause him to become a bankrupt. F

[61] It is also not in dispute that both Saraswathy and Sankaran attended the press conference on 26 September 2017. The statements issued during the press conference was published by the fourth appellant in the Tamil Malar newspaper the next day, on 27 September 2017. Having considered the press report in the Tamil Malar, we are of the considered opinion and we agree with the learned judge that the impugn statements in defamation suit were repeated and published in the Tamil Malar, and this includes the loan taken by the company RMW from Maybank, the acts of the respondent causing Sankaran to guarantee the loans, which led to the bankruptcy proceedings against him. G H

[62] As such, we find that there is a breach of the undertaking in the consent judgment not to repeat the impugn statements in the defamation suit. When Sankaran issued the impugn statements during the press conference on I

26 September 2017, Sankaran was in breach of the undertaking and is therefore guilty of contempt of court. When the fourth appellant published the impugn statement in the Tamil Malar newspaper on 27 September 2017, the fourth appellant was in breach of the undertaking and is therefore guilty of contempt of court. Since the fourth appellant is guilty of contempt of court, the directors of the fourth appellant, that is the second and the third appellants are also guilty of contempt as they are the directing mind and will of the fourth appellant in permitting the breach of the undertaking by the fourth appellant.

[63] With regards to Saraswathy, it is the finding of the learned judge that Saraswathy had aided and abetted the contemnors in breaching the undertaking given in the consent judgment.

[64] Both the draft and the sealed consent judgment was prepared by Saraswathy's legal firm, Messrs S Kandasami & Co. By the notice dated 26 September 2017, Saraswathy was notified that any act of repeating and publishing of the impugn statements will breach the undertaking in the consent judgment that tantamount to a contempt of court.

[65] However, instead of advising her clients not to breach the undertaking, Saraswathy responded to the notice dated 26 September 2017 by stating that her client, Sankaran has a right to state the factual matters to the public and denied the terms of the undertaking in the consent judgment.

[66] Added to that, Saraswathy had attended and participated in the press conference where the impugn statements in the defamation suit were repeated and subsequently published by the fourth appellant in the Tamil Malar newspaper the next day. In fact, Saraswathy made the following statement during the press conference:

> … This case and that case is the same. Because we are continuously pursuing the case, the bankruptcy case which the bank has commenced against Saravanan and our case are the connected.
>
> *We are going to continuously report about that. Even if you beat them up they will still write. Even if you murder them they will still write. The paper will not be scared. Because we come from background who doesn't know what is fear.*
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> (emphasis added)

[67] As an advocate and solicitor, Saraswathy's primary duty as officer of the court is to ensure the rules of court are observed, and to respect the order issued by the court. Therefore, we agree with the respondent that Saraswathy had failed in her professional duty as an officer of the court when she proceeded with the press conference on 26 September 2017 with Sankaran. Any reasonable professional advocate and solicitor, having been issued with a notice of possible contempt would not have taken a cavalier attitude over

the seriousness of a possible contempt action. If Saraswathy takes the position that the press conference would not be a breach of the undertaking, she should have advised her client to postpone the press conference pending clarifications from the learned judge on the terms of the consent judgment. We are of the considered opinion and we agree with the learned judge that Saraswathy had committed an act of contempt of court when she had aided and abetted Sankaran and the fourth appellant in breaching the undertaking given in the consent judgment.

[68] In *MBf Holdings Bhd & Anor v. Houng Hai Kong & Ors* [1994] 4 CLJ 1002, Dato' Anuar bin Dato' Zainal Abidin J (as he then was) emphasised the duties and responsibilities of an advocate and solicitor:

> As a member of the Bar he is also an officer of the Court. He has an onerous duty as an advocate and solicitor to see that justice is upheld. At the same time as an officer of the Court he has a duty towards the Court. Indeed his duty to the Court is most important. It is his duty to protect the dignity of Court. It is therefore expected of him to show respect for the administration of justice.

[69] His Lordship added further:

> As a member of the Bar he should have shown greater respect for an order of Court. On the contrary he had blatantly challenged the validity of the order. The defendant obtrusively defied the power of the Court and therefore has committed contumelious conduct against the order of Court.
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> … He has completely brushed aside the order of Court. He manipulated and schemed an action to suit his own purpose ignoring the supremacy of the order of Court.

[70] The case of *TO Thomas* (*supra*) affirms the principle that a solicitor (being a stranger to the proceedings) can be committed for contempt of court. The court held as follows:

> It is true to say that "the court order" is not directed at appellant. *But, as the learned judge pointed out correctly that a stranger to an action who aids and abets the breach of a prohibitory order would be obstructing the course of justice. Seaward v. Paterson* [1897] 1 Ch. 545 is authority for the proposition that the court has undoubted jurisdiction to commit for contempt a person not included in an injunction or a party to the action who, knowing of the injunction, aids and abets a defendant in committing a breach of it …
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> > As regards the law, I have myself no doubt *that if a person who knows that an injunction has been granted aids and abets in committing a breach of it* the Court of Chancery has jurisdiction to commit him for

A contempt, *although he is not a defendant in the action, and is not a person against whom the injunction has been granted.* That Murray knew of the injunction is clear.

In more recent times *Seaward v. Paterson* [1897] 1 Ch 545 was cited by Lord Denning MR in *Acrow (Automation) Ltd v. Rex Chainbelt Incorporated & Anor.* [1971] 3 All ER 1175, 1180 to show that *"it has long been held that the court has jurisdiction to commit for contempt a person, not a party to the action, who knowing of an injunction, aids and abets the defendant in breaking it.* The reason is that, by aiding and abetting the defendant, he is obstructing the course of justice. The leading case is *Seaward v. Paterson* [1897] 1 Ch 545".

(emphasis added)

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Punishment

[71] We are of the considered opinion that the learned judge had considered all the relevant factors in not imposing an imprisonment sentence on the appellants and had only imposed a fine of RM10,000 on each appellant.

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Conclusion

[72] Premised on the reasons enumerated above, we are of the considered opinion that there are no merits in these appeals that warrant an appellate intervention. The appeals are dismissed with costs.

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